

JUSTICE IN THE TIME OF E-COMMERCE: ONLINE DISPUTE RESOLUTION

INTRODUCTION

“Europe 2020” is a long-term economic and social development programme setting overriding objectives of the European Union in terms of employment, innovation, education and social inclusion, as well as climate change and energy, to be implemented by 2020¹. The Digital Agenda for Europe is one of seven flagship initiatives of the European Commission initiated in the context of the Europe 2020 strategy². Its main goal is the development of a digital single market and investment projects for the information society based on the mass use of modern information and communication technologies (ICT)³. The individual actions specified in the Digital Agenda for Europe include the creation of a digital single market, with an emphasis on the legality of internet content, facilitating electronic payments and invoicing, as well as building consumer trust in concluding online contracts of sale or the provision of services. In order to ensure the protection of consumer rights, the Agenda stresses that it is necessary to develop opportunities for alternative dispute resolution (Action 14: Explore the possibilities for Alternative Dispute Resolution), primarily as regards consumer disputes⁴.

Such recommendations reflect the growing volume of electronic transactions and the legal disputes related to them. It is necessary to intensify efforts to implement alternative dispute resolution methods to take the load off common courts and initiate new mechanisms of handling the ensuing conflicts⁵. Further, the fact of a dispute taking place in the realm of the internet, characteristic of e-commerce, has necessitated the application of electronic communications also in out-of-court dispute resolution procedures. These factors, coupled with notions of access to justice as well as the need

¹ A. BATOR, M. JABŁOŃSKI, M. MACIEJEWSKI, K. WOJTOWICZ, *Współczesne koncepcje ochrony wolności i praw podstawowych [Contemporary concepts for the protection of freedom and fundamental rights]*, „Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego” No. 42, Wrocław 2013, pp. 219–231.

² W. LEMSTRA, W.H. MELODY, *The Dynamics of Broadband Markets in Europe: Realizing the 2020 Digital Agenda*, Cambridge University Press 2014, pp. 25–54.

³ M. GRAMATIKOV, *Costs and Quality of Online Dispute Resolution: A Handbook for Measuring the Costs and Quality of ODR*, Maklu 2012, pp. 51–56.

⁴ EBP, *EU Cyber Security Strategy and Programs Handbook Volume 1 Strategic Information and Regulations*, pp. 74–75. M. GRAMATIKOV, *Costs and Quality of Online Dispute Resolution: A Handbook for Measuring the Costs and Quality of ODR*, op.cit., pp. 18–19.

⁵ G. SPINDLER, F. BÖRNER, *E-Commerce Law in Europe and the USA*, “Springer Science & Business Media” 2013, pp. 35–42.

to ensure the correct functioning of the internal retail market featuring a working system allowing consumers to pursue claims related to cross-border and domestic e-commerce transactions, have become the reason why consumer disputes are one of the more effective fields for the implementation of electronic alternative dispute settlement (Online Dispute Resolution) mechanisms.

1. DEFINITION OF THE TERM ONLINE DISPUTE RESOLUTION

The subjective scope of the term Online Dispute Resolution (ODR) covers electronic forms of out-of-court dispute resolution. Its definition includes dispute settlement processes that have gone partially or entirely online, hence the extent to which means of electronic communication are used varies⁶.

The initiative for introducing online procedures for out-of-court dispute resolution originated at the Centre for Technology and Dispute Resolution at the University of Massachusetts, where an institution called the Online Ombuds Office – OOO was established, headed by Ethan Katsh and Janet Rifkin, regarded as being the leading champions of such solutions⁷. In 1996, the first-ever electronic mediation procedure was conducted with support from OOO, concluded by the signing of a settlement agreement exclusively by email⁸. The Online Ombuds Office later cooperated with internet auction portals (e.g. Up4Sale) and, since 1998, provided mediation services for eBay, a giant on the online auction market⁹. Finally, a year later, the unit was transformed into an autonomous platform called SquareTrade, one of the first commercial providers of ODR services for consumer disputes¹⁰.

The development of electronic out-of-court dispute resolution, as initiated in the 1990s, was entirely unprofessional at first. However, by 2000 it had become commercial in nature¹¹. The first attempts at using the simplest forms of online communication, i.e. email and chat, gave way to extensive IT systems featuring modern solutions such as

⁶ The following are synonyms of the term ODR: Internet Dispute Resolution (iDR), Online ADR (oADR), Electronic ADR (eADR). S. BLAKE, J. BROWNE, S. SIME, *A Practical Approach to Alternative Dispute Resolution*, Oxford University Press 2014, p. 69. P. CORTÉS, *Online Dispute Resolution for Consumers in the European Union*, Routledge 2010, pp. 52–54.

⁷ E. KATSH, J. RIFKIN, *Online Dispute Resolution: Resolving Conflicts in Cyberspace*, Wiley 2001. P. PEŁCZERZEWSKI, *ODR – wpływ nowych technologii na alternatywne metody rozstrzygania sporów [ODR: the impact of new technologies on alternative dispute resolution methods]*, [in:] *Księga Pamiątkowa z okazji dziesięciolecia Centrum Badań Problemów Prawnych i Ekonomicznych Komunikacji Elektronicznej i Studenckiego Koła Naukowego – Blok Prawa Komputerowego*, E. GALEWSKA, S. KOTECKA (Eds.), Wrocław 2012, p. 119.

⁸ G. KAUFMANN-KOHLER, T. SCHULTZ, *Online Dispute Resolution: Challenges for Contemporary Justice*, Kluwer Law International 2004, p. 21.

⁹ A.R. LODDER, J. ZELENKOW, *Enhanced Dispute Resolution through the Use of Information Technology*, Cambridge University Press 2010, p. 76. C. RULE, *Online Dispute Resolution for Business: B2B, E-Commerce, Consumer, Employment, Insurance, and other Commercial Conflicts*, John Wiley & Sons 2003, p. 102.

¹⁰ S. ABERNETHY, *Building Large-Scale Online Dispute Resolution & Trustmark Systems*, “Proceedings of the UNECE Forum on ODR” 2003, pp. 1–18.

¹¹ M. CONLEY TYLER, *115 and Counting: The State of ODR 2004*, [in:] M. CONLEY TYLER, E. KATSH and D. CHOI (Eds.), *Proceedings of the Third Annual Forum on Online Dispute Resolution. International*

video calls and implementing advanced mathematical algorithms that analyse the data fed into the system¹². Thanks to technological developments, the out-of-court dispute resolution processes became more efficient and their management easier, thus making ODR solutions popular with the general public in certain sectors¹³. The beginning of the twenty-first century marks yet another stage in the development of ODR solutions, strictly institutional, as out-of-court dispute resolution solutions supported by electronic technologies appeared in administration (e-administration) and began to be commonly applied on the European consumer market (European ODR platform)¹⁴.

2. PRACTICAL EXAMPLES OF EUROPEAN ODR SOLUTIONS

Out-of-court dispute resolution methods using electronic communications may have originated in the US, but by the late 1990s they were gradually becoming increasingly present in Europe.

2.1. RisolviOnline

The RisolviOnline service was one of the first European ODR systems in the EU, set up in 2001 at the Chamber of Arbitration of Milan, part of the Milan Chamber of Commerce¹⁵. RisolviOnline is an online system for electronic mediation in domestic and cross-border B2C (business to consumer) and B2B (business to business) commercial disputes, supported by mediators accredited by the Chamber. The system is based on electronic forms available in English and Italian, facilitating email or chat communication¹⁶. Most of its users prefer asynchronous mediation (by email), which is both easy and convenient for them¹⁷.

The mediation procedure starts with completing an electronic mediation request, available on the RisolviOnline website. Then the Secretariat of the Chamber processes it and makes email contact with the other party, asking for their consent to participate in the procedure. Once consent has been given, the appointed mediator contacts the parties and supports the entire process. If an agreement is reached, the mediator drafts a report, signs it and forwards it to the Secretariat, which is in charge of collecting the signatures of the parties to the dispute¹⁸.

Although the online mediation procedure is far from complicated, the statistical data of the RisolviOnline system suggests a low level of use of the electronic mediation

Conflict Resolution Centre in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), 2004.

¹² Family Winner and Split Up are examples of ODR systems using advanced IT algorithms.

¹³ Selected fields of the application of ODR methods include consumer, family and banking disputes, conflicts involving online violations of intellectual property rights.

¹⁴ M. GOTTI, *Developments in the Discourse of Conflict Resolution*, "Lapland Law Review" 1, pp. 20–51.

¹⁵ The website of the RisolviOnline service is available at: www.risolvionline.com/index.php.

¹⁶ R. REGAZZONI, *RisolviOnline: Online Mediation from a Very Practical Point of View*, [in:] M. POBLET (ed.), "Expanding the Horizons of ODR", *Proceedings of the 5th International Workshop on Online Dispute Resolution*, pp. 32–36.

¹⁷ Statistical data received from Roberta Regazzoni, manager of the RisolviOnline system [1 May 2016].

¹⁸ The RisolviOnline system does not prefer the electronic signature system.

offered by the Milan Chamber of Commerce¹⁹. In 2002–2014, the system registered 908 e-complaints, more than 85% of which were B2B disputes. Out of those 908 complaints, just 48 involved the mediation procedure²⁰. The reasons for the unsatisfactory level of the system use could be, for instance, lack of trust in e-mediation or a lack of knowledge as regards a possible out-of-court dispute resolution²¹.

2.2. RECHTWIJZER JUSTICE PLATFORM

A unique example of the application of out-of-court dispute resolution solutions using electronic communications is the Rechtwijzer platform, set up in cooperation with the University of Tilburg (the Netherlands) in 2010²². Initially, the Rechtwijzer Justice Platform 1.0 was an interactive application that facilitated obtaining legal information in selected areas, e.g. family, administrative or consumer law. Thanks to an electronic tool to support the legal information search process (Dispute Roadmap), the user was able to select ways to pursue claims and finalise the dispute appropriate for their case²³.

The original version of the service was replaced in 2014 by a modern platform dedicated to family law and covering divorce and separation – Rechtwijzer Justice Platform 2.0²⁴. The current system is a tool that facilitates communication between the parties to a dispute, offering a possibility to end the procedures with a legally binding agreement between the parties, reached thanks to the support of lawyers, mediators and arbiters. The Rechtwijzer Justice Platform 2.0 system allows for the resolution of key matters in cases of divorce or separation i.e. establishing the conditions of the break-up, ways of exercising parental authority, satisfying the needs of the family, contact with children, as well as maintenance, property and accommodation aspects, without having to participate in meetings in person, thus avoiding emotionally charged situations. Logging in the system, the parties describe the object of their dispute and suggested conditions of the agreement to resolve contentious matters. The next stage can follow only once the contents of the agreement have been approved by both parties. In the absence of a consensual solution, the parties may resort to assistance provided by a mediator or an arbiter. In order to make sure the agreement complies with the law and is enforceable, its final version is subject to verification by lawyers. Once approved, the agreement is submitted with the common court of territorial and material jurisdiction²⁵.

¹⁹ Statistical data received from Roberta Regazzoni, manager of the RisolviOnline system [1 May 2016].

²⁰ The reason for such a low number of electronic mediation proceedings compared with the number of online complaints is due to a party's failure to obtain permission to conduct an out-of-court procedure.

²¹ The mediation procedural costs in the RisolviOnline system depend on the value of the object of the dispute, starting from EUR 20 (for either party) when the value of the object of the dispute defined at not more than EUR 500.

²² The Rechtwijzer Justice Platform is an initiative of the Council for Legal Aid of the non-governmental organisation HiiL Innovating Justice and Modria (an US ODR service provider), funded by the Dutch Ministry of Security and Justice. The Rechtwijzer Justice Platform is available at: www.rechtwijzer.nl/.

²³ Instytut Prawa i Społeczeństwa, *Bezpłatne poradnictwo prawne i obywatelskie – analiza danych zastanych* [Free-of-charge legal and civic advisory services: analysis of data found], Warsaw 2012, pp. 355–356.

²⁴ The system has been modified thanks to cooperation with Modria, one of the largest ORD service providers in the US.

²⁵ The cost of the basis procedure in the Rechtwijzer Justice Platform 2.0 system amounts to EUR 390, while the Consumers' Association suggests that in the case of the traditional court proceedings such costs

The statistics of Rechtwijzer Justice Platform 2.0, published in February 2015, i.e. four months after the introduction of the new version, showed that 24 people had initiated the procedure and were waiting for the approval of the terms of the agreement by the counterparty, 23 married couples were in the process of negotiating such terms, 11 were waiting for an expert (lawyer) to assess the agreement, while 4 had successfully completed all the stages of the process, thus sealing their divorce²⁶.

Family law is a domain where ODR methods are implemented relatively frequently in the Anglo-Saxon system, as exemplified by the Australian systems Family Winner and Split Up²⁷. Being more conservative, the continental system of law is less keen to adopt electronic forms of communication in civil procedure and out-of-court scenarios²⁸. Further, although the highly emotional and conflict-generating field of family law had previously seemed difficult not just for making ODR more popular, but also for the common use of classic mediation, the example of Rechtwijzer Justice Platform 2.0 shows an innovative approach to the subject in question²⁹.

Examples of European Internet platforms offering services in out-of-court dispute resolution can be found in many EU Member States. Online mediation is available in such countries as the United Kingdom (CivilMediation), Belgium (Belmed) and Italy (Concilia-online). Electronic arbitration is available through the Spanish services called ConfianzaOnline and ADRForum, as well as the Arbitration and Mediation Centre at the World Intellectual Property Organization (WIPO). Each case should be treated separately as an individual electronic tool for settling disputes in various ways (mediation, arbitration, negotiations), with different procedural rules, graphic design, cost and timeline³⁰.

The field of consumer disputes arising from commercial transactions performed electronically makes one of the most effective and frequent areas of ODR application³¹.

would be EUR 3,000 [source: Report HiiL Innovating Justice: J. PIEST, M. BARENDRECHT, M. GRAMATIKOV, *The justice of separation procedures*, 2015].

²⁶ The statistics lifted from the HiiL Innovating Justice website: <http://www.hiil.org/insight/first-real-contact-with-Rechtwijzer-2.0> [1.05.2016].

²⁷ J. ZELEZNIKOW, E. BELLUCCI, *Using Asset Divider to Investigate the Israel – Palestinian Dispute, Proceedings of the 6th International Workshop on Online Dispute Resolution (ODR Workshop'10)*, pp. 37–50. J. ZELEZNIKOW, E. BELLUCCI, *Family-Winner: Integrating game theory and heuristics to provide negotiation support*, JURIX 2003, pp. 21–30. T. SOURDIN, *ODR – An Australian perspective on the digital divide*, [in:] M.C. CONLEY TYLER, E. KATSH, D. CHOI, *Proceedings of the Forum ODR*, Melbourne, Australia, 2004, pp. 1–22.

²⁸ K. FLAGA-GIERUSZYŃSKA, J. GOŁACZYŃSKI, D. SZOSTEK, *Informatyzacja postępowania cywilnego. Teoria i praktyka [Informatisation of civil procedure. Theory and practice]*, CH Beck, Warsaw 2016.

²⁹ The relatively stable numbers of proceedings in family matters in common courts of law concluded by a mediated amicable agreement are shown by the statistical data from the Polish Ministry of Justice. In 2006–2015, there were 9,768 such proceedings concluded as a result of mediation, with amicable solutions found in 3,952 cases. In 2006, there were 127 amicable dispute resolutions out of 270 cases (47%); in 2010, 439 out of 988 cases (44%); and in 2015, 856 out of 1,932 cases (44%). The statistical data available on the website of the Ministry of Justice at: www.ms.gov.pl/pl/dzialalnosc/mediacje/publikacje-akty-prawne-statystyki/ [01.05.2016].

³⁰ M.S. ABDEL WAHAB, E. KATSH, D. RAINER, *Online Dispute Resolution: Theory and Practice. A Treatise on Technology and Dispute Resolution*, “International Publishing Eleven” 2012, pp. 9–22.

³¹ K. MANIA, *ODR w sporach konsumenckich [ODR in consumer disputes]*, [in:] *ADR – Mediacja i Arbitraż*, No. 2(10)/2010, CH Beck, Warsaw 2010, pp. 15–21.

As a notion, creating online tools to facilitate the resolution of disputes in that domain when they arise seems an effective way to take some load off the justice system³².

3. CONSUMER DISPUTES IN EU LAW

One of the key objectives set within the European Union's internal policy is the creation of a single area of freedom, security and justice by means of easier access to justice, requiring out-of-court dispute settlement procedures in order to take the load off common courts³³. At the same time, consumer protection is the competence of the Member States and the European Union, as expressed, among other things, in Article 169(1) and Article 169(2) of the Treaty on the functioning of the European Union, in Article 2 of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, and Article 38, in connection with Article 47 of the Charter of Fundamental Rights of the European Union³⁴. Given the above, consumers' access to alternative systems offering dispute resolution by mediation and consensual procedures varies depending on the Member State³⁵.

In order to reduce the existing differences as regards consumer protection levels across the EU, the European process began in the late 1990s, by introducing provisions paving the way for their unification. In Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, and Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, it was pointed out that the disproportions had to be lifted as regards the legal protection of consumers in pursuing their claims and rights, one constituent part being out-of-court dispute resolution systems³⁶. Despite such calls, the promotion of alternative dispute resolution methods failed to always bring the desired results, thus making it necessary to come up with an appropriate legislative package to be implemented by the Member States³⁷.

³² Z.S. TANG, *Electronic Consumer Contracts in the Conflict of Laws*, Bloomsbury Publishing 2009, pp. 28–31.

³³ J. SOZAŃSKI, *Prawa człowieka w Unii Europejskiej [Human Rights in the European Union]*, PWP Iris, Warsaw 2013, pp. 50–52.

³⁴ The Treaty on the Functioning of the European Union (OJ EU 9 May 2008 C115). The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 (OJ 2009 no 203 item 1569). Charter of Fundamental Rights of the European Union (OJ EU 2012 C 326).

³⁵ P. CORTES, *Online Dispute Resolution for Consumers in the European Union*, op.cit., pp. 10–16.

³⁶ Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (OJ L 115 of 17 April 1998) and Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJ L 109 of 19 April 2001).

³⁷ K. GAJDA-ROSZCZYŃSKA, *Sprawy o ochronę indywidualnych interesów konsumentów w postępowaniu cywilnym [Cases for the protection of individual consumers' interests in civil proceedings]*, Wolters Kluwer, Warsaw 2011, pp. 23–59.

3.1. EUROPEAN LEGISLATIVE PACKAGE CONCERNING CONSUMER DISPUTES

Paving the way for organisational changes in national systems of alternative consumer dispute resolution, Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), as well as Regulation (EU) No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)³⁸ were published on 18 June 2013. These legal provisions apply to disputes between consumers and enterprises as regards contractual obligations arising from contracts of sale or the provision of services (with few exceptions), concluded over the internet or elsewhere³⁹.

Regarding consumer disputes, the ADR Directive and the ODR Regulation aim to make the retail sale market more efficient by introducing a complex system of alternative, traditional and electronic, dispute resolution methods. The legislative changes will help retain stability on the EU internal market by providing the consumer with an alternative to common courts, and traders with a tool allowing them to avoid long trials of several years⁴⁰.

Pursuant to Article 2(1) of the directive, its substantive scope covers procedures for the out-of-court resolution of domestic and cross-border disputes concerning contractual obligations stemming from sales contracts or service contracts between a trader established in the Union and a consumer resident in the Union through the intervention of an ADR entity that proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution of both domestic disputes (involving consumers residing in the same Member State where the trader is established) and cross-border ones (when the consumer resides in a different country than that of the trader's establishment) related to contractual obligations arising from sales or service contracts between an economic operator established in the Union and

³⁸ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR, hereinafter the "Directive") and Regulation (EU) No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR, hereinafter the "Regulation") (L 165/1, 18 June 2013).

³⁹ P. RODZKIEWICZ, *Czy istnieje potrzeba wprowadzania instrumentu prawnego dotyczącego Online Dispute Resolution (ODR) w zakresie rozstrzygania sporów wynikłych z transgranicznych transakcji handlu elektronicznego* [Is there a need to introduce a legal instrument concerning Online Dispute Resolution (ODR) as regards resolving disputes arising from cross-border electronic commerce transactions?], "Prawo Mediów Elektronicznych" 1/2012, pp. 39–44.

⁴⁰ The Member States were obliged to implement the aforementioned legal acts by July 2015 while the deadline for the launch of the platform was set at January 2016. On 31 March 2015, the Council of Ministers adopted the foundations for the draft act on out-of-court consumer dispute resolution, submitted by President of Office of Competition and Consumer Protection, constituting the implementation of the provisions of the ADR Directive. By 1 May 2016, Poland did not transpose the provisions in question. The text of the draft act is available on the official website of the Government Legislation Centre: <http://legislacja.rcl.gov.pl/projekt/241375/katalog/241416#241416> [1.12.2016].

a customer residing in the Union, with some exemptions spelt out in the provisions of Article 2 (2) (e.g. disputes between traders)⁴¹.

Pursuant to Article 2(1) of the Regulation, its scope covers “out-of-court resolution of disputes concerning contractual obligations stemming from online sales or service contracts between a consumer resident in the Union and a trader established in the Union”. The definition in the ODR Regulation includes consumer disputes, identical as those regulated in the ADR Directive, limited to the legal basis of the contracts concluded online.

Pursuant to Article 6 (1) of the Regulation, the first European ODR platform, an interactive information website, most importantly a contact point for submitting e-complaints in consumer disputes in the subjective scope indicated in the provisions in question has been in operation since 10 January 2016 (the final effective date was 15 February 2016)⁴². In its target version, the free-of-charge website will be available in all the official languages of the European Union, including Polish⁴³. In terms of logistics, the platform is just a “site” mediating between the parties able to make online contact and entities providing the service of out-of-court dispute resolution featuring on the list kept by the European Commission, unanimously selected by the parties to the dispute⁴⁴.

The procedure for submitting e-complaints via the European ODR platform designed in the regulation starts by completing an electronic form requiring specific information such as the consumer and the trader’s name, or first name and surname, email address, full postal address, type of commodity or service that the complaint relates to, as well as a description of the case⁴⁵. The information submitted by the complainant must be sufficient to establish the relevant ADR entity. Once the application has been correctly completed, the ODR platform will forward it to the party against which the complaint

⁴¹ As a consequence of the subjective scope of the directive adopted by the European legislator, the domestic act implementing the abovementioned provisions embraces all disputes that may arise between the consumer and the trader, stemming from contractual relations, with a handful of exemptions referred to in Article 2(2) of the directive. At the same time, ADR entities have a choice as regards extending their competences, with relation to the restrictions referred to in the directive.

⁴² The website of the European ODR platform is available at: www.webgate.ec.europa.eu/odr/main/?event=main.home.show [1.12.2016].

⁴³ At the time this article was being prepared, the European ODR platform is available in 23 official languages, including Polish [1 December 2016]. As the provisions of the directive have not been implemented in all the legal systems of the Member States, the platform features dispute resolution entities in certain sectors or countries such as Croatia, Spain, Poland, Romania; as a result, the consumer may be unable to use the website to resolve his/her disputes with sellers from those countries [1.12.2016].

⁴⁴ Pursuant to Article 20, in connection with Article 19(1) of the directive, the competent authority appointed in each Member States will assess on the basis of the information it has received, whether the dispute resolution entities notified to it qualify as ADR entities falling within the scope of the directive and comply with the quality requirements set out in Chapter II, and in national provisions implementing it, including national provisions going beyond the requirements of the directive, in conformity with Union law. In Poland, the competent authority for that purpose is the Office of Competition and Consumer Protection.

⁴⁵ The scope of information to feature in the complaint has been specified in an annex to the ODR Regulation. A complaint submitted to the ODR platform will be processed if all the necessary sections of the electronic complaint form have been completed (Article 9(1) of the ODR Regulation). If the complaint form has not been fully completed, the complainant party must be informed that the complaint cannot be processed further, unless the missing information is provided (Article 9(2) of the ODR Regulation).

has been made, together with information on the selection of an ADR entity⁴⁶. If the respondent party is a trader, the complaint will include an invitation to state, within 10 calendar days, whether the trader is obliged to use, or undertakes to use, a specific ADR entity to resolve disputes with customers, and if the trader is not obliged to use a specific ADR entity – whether the trader is willing to use one or more ADR entities competent to deal with the complaint, as long as that entity or entities has or have been listed in the form of an electronic complaint or identified by the ODR platform on the basis of the information provided in that form (Article 9(3)(c)) in connection with Article 9(3)(b) of the ODR Regulation)⁴⁷. Once feedback has been received from the counterparty, in the event that the complainant party is a consumer, the platform will communicate the information concerning the ADR entity or entities stated by the trader and an invitation to agree, within 10 calendar days, on an ADR entity⁴⁸. The ODR platform will automatically and without delay transmit the complaint to the ADR entity (or entities) that the parties have agreed to use as previously arranged⁴⁹. Pursuant to Article 9(7) of the ODR Regulation, the ADR to which the complaint has been transmitted will, without delay, inform the parties about whether it agrees or refuses to deal with the dispute in accordance with Article 5(4) of Directive 2013/11/EU⁵⁰. Where the parties fail to agree within 30 calendar days after submitting the complaint form on an ADR entity, or the ADR entity refuses to deal with the dispute, the complaint will not be processed further in an out-of-court procedure⁵¹. In addition, pursuant to Recital 40 and Article 8(e) of the directive, the ADR entity is obliged to make the outcome of the out-of-court procedure available within a period of 90 calendar days from the date on which the ADR entity received the complete complaint file. In the case of highly complex disputes, the ADR entity in charge may, at its own discretion, extend the 90 calendar day time period, with the parties duly informed. The term will pertain to both online and non-online proceedings.

The directive and regulation place an emphasis on the electronic format of the procedure, hence the ADR entity must have the technical capacity to receive the complaint and exchange information between the parties by electronic means, while the parties should be able to submit their information and evidence without being

⁴⁶ The complaint is recorded in an official language of the European Union selected on the website.

⁴⁷ In the event that the respondent party is a consumer, and the trader is obliged to use a specific ADR entity, an invitation to agree on that ADR entity within 10 calendar days or, in the event that the trader is not obliged to use a specific ADR entity, an invitation to select one or more ADR entities that are competent to deal with the complaint, if any are referred to in the electronic complaint form or are identified by the ODR platform on the basis of the information provided in that form (Article 9(3)(d) in connection with Article 9(3)(b) of the ODR Regulation).

⁴⁸ The analogous period of 10 calendar days applies in the event that the complainant party is a trader not obliged to use a specific ADR entity (Article 9(4)(c) of the ODR Regulation).

⁴⁹ The list of ADR entities notified to the European Commission is available on the website: www.webgate.ec.europa.eu/odr/main/?event=main.adr.show [1.12.2016].

⁵⁰ Article 5(4) of the ADR Directive reads as follows: “Where, in accordance with its procedural rules, an ADR entity is unable to consider a dispute that has been submitted to it, that ADR entity will provide both parties with a reasoned explanation of the grounds for not considering the dispute within three weeks of receiving the complaint file”.

⁵¹ In the national draft act, following the recommendations in the directive, no mandatory submission is envisaged of the trader to dispute resolution by an ADR entity, thus the voluntariness concerns both parties to the dispute.

physically present (Recital 42 and Article 5(2) of the ADR Directive). At the same time, the legal acts in question do not exclude non-electronic formats, with the reservation that the traditional form of communication should not be too cumbersome in the implementation of the procedures⁵².

The regulation imposes certain information obligations on traders engaging in online sales or service contracts, and online marketplaces established within the Union, such as providing on their websites an electronic link to the ODR platform⁵³. Additionally, traders established within the Union engaging in online sales or service contracts must also state their email addresses (Article 14 (1) of the ODR Regulation)⁵⁴.

CLOSING REMARKS

Analysing the growing number of implemented electronic solutions, both in-court and out-of-court, one could imagine that future dispute resolutions will be increasingly often affected by new technologies that boost the efficiency of the communication processes or document exchange⁵⁵.

The considerations related to problems with jurisdiction and selecting the applicable law as regards conflicts taking place on the internet serve to encourage parties to use alternative means for solving disputes. The applicable law selection made by the parties in the form of an agreement, including an arbitration panel clause, eliminates the problem of jurisdiction and applicable law, which is a pertinent one in the case of common courts. As panels of conciliation are not burdened with such limitations, they make an efficient remedy against the challenges faced by common courts.

The growing number of examples of innovative internet projects in the out-of-court area supporting the e-justice sector is a natural consequence of the ever more frequent conflicts stemming from contractual obligations, for instance in online business-to-

⁵² The ODR platform will guarantee the confidentiality and protection of personal data of the entities, pursuant to the provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ of 23 November 1995 L 281) and Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ of 12 January 2001 L 8).

⁵³ The provision of services by electronic means is regulated by the Act on the Provision of Electronic Services of 18 July 2002 (OJ 144, item 1204, as amended), which defines its subject matter as the provision of services made by sending and receiving data using ICT systems, at the recipient's individual commission, without the simultaneous presence of both parties, where the data are transmitted by means of public networks in the meaning of the Telecommunications Act of 16 July 2004, i.e. those used to provide services publically available. Such services are provided online, which includes electronically concluded contracts.

⁵⁴ Traders established within the Union engaging in online sales or service contracts, if they have undertaken or are obliged to use one or more ADR entities to resolve disputes with consumers, must inform consumers about the existence of the ODR platform and the possibility of using the ODR platform for resolving any disputes. They must provide an electronic link to the ODR platform on their websites and, if the offer is made by email, then in that email. The information will also be provided, where applicable, in the general terms and conditions applicable to online sales and service contracts (Article 14(2) of the ODR Regulation).

⁵⁵ R. SUSSKIND, *Tomorrow's Lawyers* [Translated into Polish as "Prawnicy przyszłości"], LEX, Warsaw 2013, pp. 121–135.

consumer relations. This, in turn, makes it necessary to create systemic solutions like the European ODR platform⁵⁶. Additional aspects, e.g. overburdened common courts, seem to strongly suggest that the future of dispute resolution will be largely based on out-of-court solutions using means of electronic communication⁵⁷.

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